

**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR  
IN THE FEDERAL TERRITORY, MALAYSIA.  
[ORIGINATING SUMMONS NO. WA-24NCVC-2225-06/2023]**

In the Estate of Lee Pheck Hong (NRIC No. 360303–71–5396/Singapore NRIC No. S–0787812–E, Deceased;

And

In the matter of Section 62 of the Probate and Administration Act 1959;

And

In the matter of Order 80 rule 2(3)(a) and (e), and Order 80 rule 5 of the Rules of Court 2012.

**BETWEEN**

- 1. LEE HIONG KIAT**
- 2. KEE CHAI HONG**
- 3. LEE ZWOHANN AUSTEN**
- 4. LEE ZWOYANG RYAN**  
**(ALL AS BENEFICIARIES OF THE**  
**ESTATE OF LEE PHECK HONG**  
**(NRIC NO. 360303–71–**  
**5396/SINGAPORE NRIC NO.**  
**S–0787812–E)**

**... PLAINTIFFS**

**AND**

- 1. LEE TIN HUI**
- 2. LEE TIN NEE**

**(BOTH AS THE JOINT EXECUTORS  
OF THE ESTATE OF LEE PHECK  
HONG (NRIC NO. 360303–  
71–5396/SINGAPORE NRIC  
NO. S–0787812–E)**

**... DEFENDANTS**

## **JUDGMENT**

### **Introduction**

[1] In this originating summons, the plaintiffs made an application for an order that the defendants as the joint executors do furnish them with the audited account of the estate of the deceased. The plaintiffs sought to have the audited account dating back six months prior to the demise of the deceased up to the period of two weeks immediately preceding the date of the Order.

[2] After perusing the application and the affidavits and considering the position of the respective parties as deliberated in their submissions, I dismissed the application with RM3,000.00 cost for each defendant. The plaintiffs were not satisfied and appealed.

### **Brief background facts**

#### *The Will*

[3] The late Madam Lee Pheck Hong made a Will dated 01.04.2017. In the Will, she named the defendants and the plaintiffs as the beneficiaries. The deceased also appointed both the defendants as the trustees and joint executors of the Will.

[4] Under the Will, the deceased devised and bequeathed her Estate to the plaintiffs and the defendants as follows:

#### *Lee Tin Hui (1<sup>st</sup> defendant)*

- (a) all monies and savings in United Overseas Bank (M) Berhad at Jalan Raja Laut branch, Kuala Lumpur held under Fixed

Deposit No. 151-006-496-3 (“UOB KL FD 496”),

- (b) all monies and savings in —
  - (i) Oversea-Chinese Banking Corporation Ltd of Chulia Street, OCBC Centre, Singapore 049513 held under Current Account No. 508-300-159001 (“OCBC Singapore Current Account”); and
  - (ii) the Central Provident Fund Board bearing Account No. S-0787812-E (“CPF Singapore”),
- (c) all jewelleries and personal effects kept in safe deposit box No. 975, United Oversea Bank Berhad of Jalan Raja Laut branch, Kuala Lumpur (“UOB KL SDB”),

*Lee Tin Nee (2<sup>nd</sup> defendant)*

- (d) an apartment bearing the address Apartment Block 106, Simei Street 1, # 06-816 Singapore 52106 erected on a piece of land held under Volume 362, Folio 67, Mukim 28, Lot 04186 and Strata Lot 4186/U325 (“Apartment 106 Singapore”),
- (e) all monies and savings at HSBC Bank Malaysia Berhad of the Damansara Utama branch, Petaling Jaya held under—
  - (i) Current Account No. 316.102300.108 (“HSBC PJ Current Account”); and
  - (ii) Time Deposit Account No. 316.102300131 (“HSBC PJ Time Deposit”),
- (f) all monies and savings in United Overseas Bank (M) Berhad at Jalan Raja Laut branch, Kuala Lumpur held under Savings Account No. 151-315-156-5 (“UOB KL Savings Account”),

*Lee Tin Hui (1<sup>st</sup> defendant) and Lee Tin Nee (2<sup>nd</sup> defendant) in equal shares*

- (g) all monies and savings in RHB Bank Berhad at Bangsar Shopping Centre, Bangsar branch, Kuala Lumpur held under Current Account No. 214-33430000184 (“RHB KL Current Account”),

*Lee Hiong Kiat (1<sup>st</sup> plaintiff) and Kee Chai Hong (2<sup>nd</sup> plaintiff) in equal shares*

- (h) all monies and savings at United Overseas Bank (M) Berhad at Jalan Raja Laut branch, Kuala Lumpur held under —

(i) Current Account No. 151-300-037-0 (“UOB KL Current Account”); and

(ii) Time/Fixed Deposit Account No. 151-006-492-0 (“UOB KL FD 492”),

*Lee Zwohann Austen (3<sup>rd</sup> plaintiff) and Lee Zwoyang Ryan (4<sup>th</sup> plaintiff) in equal shares*

- (i) all fully paid-up shares and stocks in Singapore held under CDS Account No. 1681-0809-3488 (“Singapore CDS Account”),

*Lee Hiong Kiat (1<sup>st</sup> plaintiff), Lee Tin Nee (2<sup>nd</sup> defendant), Lee Tin Hui (1<sup>st</sup> defendant) and Kee Chai Hong (2<sup>nd</sup> plaintiff) in equal shares*

- (j) the whole residuary estate both movable and immovable and of whatsoever nature or description and wheresoever situated now and/or hereafter acquired, subject to and after payment of all debts, funeral and testamentary expenses and duty, if any (“Residuary Estate”).

[5] Two days after she made the Will, the deceased passed on. Six months later on 04.10.2017, the Grant of Probate was extracted and administration of the Estate was granted to the 1<sup>st</sup> and 2<sup>nd</sup> defendants as joint executors. Approximately two months after that, the 1<sup>st</sup> defendant

circulated to all the beneficiaries including the plaintiffs information relating to the progress of the administration of the estate of the deceased. This was done through the family's *Whatsapp* group chat platform. The executors' report on the status of the estate for the period between 04.10.2017 and 21.12.2017 was also provided.

*2019 Consent Order and appointment of attorneys*

[6] Subsequently, both the 1<sup>st</sup> and 2<sup>nd</sup> defendants found it to be a challenge to work together in administering the Estate due to various issues. For context, the 2<sup>nd</sup> defendant is a Singaporean citizen and resided principally in San Francisco, United States of America.

[7] Approximately eleven months after the grant of probate, the 1<sup>st</sup> defendant filed an application before the High Court to remove the 2<sup>nd</sup> defendant as joint executor of the Estate and for the 1<sup>st</sup> defendant to remain the sole executor. An alternative prayer was also made for the 1<sup>st</sup> defendant to be removed as joint executor of the Estate and for the 2<sup>nd</sup> defendant to remain as the sole executor. Two days later the 2<sup>nd</sup> defendant filed a similar application against the 1<sup>st</sup> defendant.

[8] The disagreement between the 1<sup>st</sup> and the 2<sup>nd</sup> defendants in administering the Estate was later resolved amicably. Towards the end of November 2019, the two defendants reached an agreement and entered into a consent order before the High Court ("2019 Consent Order"). Pursuant to the 2019 Consent Order, the 1<sup>st</sup> and 2<sup>nd</sup> defendants as joint executors of the Estate, in essence, agreed —

- (a) that the 1<sup>st</sup> and 2<sup>nd</sup> defendants do execute separate powers of attorney to appoint their respective attorneys for the purpose of carrying out the duties of the executors of the Estate,
- (b) the 1<sup>st</sup> defendant appointed Ms. Fiona Bodipalar ("Ms. Fiona") of Messrs. Bodipalar Ponnudurai De Silva "Messrs. Bodipalar") and the 2<sup>nd</sup> defendant appointed Mr. Nicholas Hor Sien Pin ("Mr. Nicholas") of Messrs. Siong & Rita ("Messrs.

Siong”),

- (c) that to the best abilities of the parties and their respective attorneys and insofar as circumstances may allow the Estate shall be administered in accordance with certain guidelines appended to the 2019 Consent Order and described as Enclosure A,
- (d) that the 1<sup>st</sup> and 2<sup>nd</sup> defendants be entitled to claim from the Estate the expenses of the executors including the remuneration for Ms. Fiona and Mr. Nicholas,
- (e) all expenses shall be shared equally among all the beneficiaries,
- (f) that any fees incurred with regard to the transfer of real properties (the Singapore HDB flat and the Canadian lot) excluding the standard legal fees will be borne by the recipient beneficiary/transferee and not the Estate.

*Request for accounts and the reply*

[9] In May 2023, the plaintiffs’ solicitors requested Ms. Fiona to completely account for the assets of the deceased together with all supporting documents beginning from the period of six months prior to her demise up to the current date then. The plaintiffs’ solicitors also requested for some explanation regarding a particular ring purportedly meant for the 2<sup>nd</sup> plaintiff and allegedly left by the deceased in the custody of the 1<sup>st</sup> defendant. Inquiries were also made with regard to the transfer by the deceased of her Honda Civic bearing registration number WHN 889 (“Civic WHN 889”) to a friend of the 1<sup>st</sup> defendant.

[10] In the reply provided a week later, Messrs. Bodipalar stated that the 1<sup>st</sup> and 2<sup>nd</sup> defendants as executors had appointed an accounting firm, BDO Malaysia, as the estate accountant. Further, Messrs. Bodipalar added that an estate account has been opened in 2017 at the United Overseas Bank (Malaysia) Berhad (“Estate Account”).

**[11]** Consequently, the following monies were accounted for and transferred into the Estate Account:

- (a) proceeds of sale of Shares held under the CDS Account No. 066-001-008288565 at Bursa Malaysia Depository Sdn Bhd (“Bursa Malaysia CDS Account”),
- (b) monies in UOB KL FD 492 (for 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs in equal shares),
- (c) monies in UOB KL Current Account (for 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs in equal shares),
- (d) monies at RHB Bank Berhad held under Savings Account No. 1-14277-0018100-4 (“RHB Savings Account”),
- (e) monies at Overseas-Chinese Banking Corporation Ltd held under Time Deposit Account No. 501573281501 (“OCBC Time Deposit”),
- (f) dividends under the Singapore CDS Account.

**[12]** In the reply, Messrs. Bodipalar further explained that upon transfer of the monies into the Estate Account all the individual accounts were closed accordingly except for one, namely the Singapore CDS Account. Messrs. Bodipalar explained the Singapore CDS Account was kept opened on the advice of the Singapore Exchange. According to the Singapore Exchange, the Singapore CDS Account should be kept active to allow for the remittance of residual dividends.

**[13]** In a related matter, the tax file of the deceased in Singapore was also kept opened. This is due to the fact that it may only be closed after the Singapore CDS Account is closed.

**[14]** In the meantime, the executors were in the midst of closing the tax file of the deceased in Malaysia. Once both of the deceased’s tax files in Singapore and Malaysia have been closed, the executors will be able to

complete the distribution of the Estate after settling all expenses and reimbursements.

[15] In the same reply Messrs. Bodipalar also stated —

- (a) that sometime in late 2017 the Civic WHN 889 was transferred to Ms Chung Kit Pin in accordance with the wishes of the deceased,
- (b) that the jewellery will be distributed together with the rest of the Estate,
- (c) that the ASIC shares have been delisted, and
- (d) that the land in Canada has been reclaimed by the Government of Canada pursuant to a judgment dated 31.10.2019 as a result of non-payment of property taxes for three years. The judgment showed that twenty-eight other properties belonging to other owners suffered the same fate.

[16] In another reply issued a day later, Messrs. Bodipalar enclosed the *pro forma* account for the Financial Year 2022 prepared by BDO Malaysia. The *pro forma* account consisted of statements of assets and liabilities as at 31.12.2022 and statements of income and expenses between the date of Grant of Administration of the Estate on 04.10.2017 and 31.12.2022. Both statements were in respect of the Estate in Singapore and Malaysia.

[17] In both replies, Messrs. Bodipalar stated —

- (a) that all steps taken to administer the Estate have been done in accordance with the obligations of the joint-executors and the attorneys pursuant to the Will and the laws of Malaysia as well as the laws of Singapore, and
- (b) that the information and documents were furnished in the interim pending finalization of the accounts of the Estate by BDO Malaysia.



*Plaintiffs' response*

[18] However, the plaintiffs were not satisfied with the responses by Messrs. Bodipalar and raised several concerns after perusing the *pro forma* accounts and the various statements. These were in relation to allegations that several parts of the Estate remained undistributed including —

*For 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs*

- (a) payment of the balance of UOB KL FD 492 which as of 30.08.2017 remained at RM95,125.31,
- (b) payment of the balance of UOB KL Current Account which as of 30.08.2017 remained at RM29,881.75,
- (c) distribution of the Residuary Estate including —
  - (i) proceeds of the Shares sold under the Bursa Malaysia CDS Account and transferred sometime in 2021 into the account of one of the defendants,
  - (ii) balance of monies in the RHB Savings Account,
  - (iii) balance of monies in the OCBC Time Deposit which as of 03.04.2017 amounted to SGD10,113.23,

*For 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs*

- (d) dividends for the deceased's shares under the Singapore CDS Account received by the Estate,

and many others.

[19] The plaintiffs were concerned with the alleged delay in the administration of the Estate by the defendants. The plaintiffs were also concerned that some monies from the accounts may have been taken out prior to the demise of the deceased. There were many other queries by the plaintiffs. According to the plaintiffs, these were all too suspicious.

*Reliefs prayed for*

[20] In June 2023 the plaintiffs filed the present application. In the application, the plaintiffs prayed for the following reliefs against the defendants:

- (a) for a full account and inventory, and a complete and full audited accounts of all the assets and liabilities of the Estate commencing from the period of six months before the deceased passed on up to the period of two weeks immediately preceding the date of this Order,
- (b) for complete statement of accounts as certified by the respective banks and institutions commencing from the period of six months before the demise of the deceased up to the period of two weeks immediately preceding the date of this Order for the following:
  - (i) UOB KL FD 492,
  - (ii) UOB KL Current Account,
  - (iii) Bursa Malaysia CDS Account,
  - (iv) RHB Savings Account,
  - (v) OCBC Time Deposit,
  - (vi) Singapore CDS Account,
- (c) for the defendants to pay the plaintiffs their respective entitlements under the Will within two weeks from the date of the Order,
- (d) for provisions be made for the cost of this action, and
- (e) other reliefs.

[21] After the affidavits were exhausted, the originating summons came

up for hearing almost three months thereafter. Since parties were in the midst of exploring the possibility of an out of court settlement then, an adjournment was allowed. The application was eventually heard almost a month later when an amicable settlement was no longer on the table.

### **Analysis and findings**

[22] The duty to render accounts is a constituent element in the administration of the estate of the deceased. It is not dependent on any allegation of breach of duty, breach of trust or any wrongdoing by the executors in the administration of the estate.

[23] The position of the law insofar as the duty of the executor to furnish and keep the beneficiaries informed of the statement of account of the estate of the deceased is settled. In submissions, the learned counsel for the plaintiffs relied on the same authorities which I now reproduced for ease of reference.

[24] In *Dr. Chan Chin Cheung v. Chan Chak Cheung & Anor* [2005] 2 CLJ 405 CA; [2005] 1 MLRA 186; [2005] 2 AMR 780 His Lordship the Honourable Augustine Paul JCA referred to the *Halsbury's Laws of Malaysia*, Vol. 5 at page 720 which states as follows:

“A trustee must furnish to a beneficiary, or to a person authorised by him, on demand, information or the means of obtaining information as to the mode in which the trust property or his share in it has been invested or otherwise dealt with, and as to where it is and full accounts respecting it, whether the beneficiary has a present interest in the trust property or only a contingent interest in remainder, or is only an object of a discretionary trust. If the trustee neglects or fails to do so, he is liable for the costs of proceedings to compel production of information or accounts. He must also allow a beneficiary to inspect the trust accounts and all documents relating to the trust, and has a duty to explain to a beneficiary what his rights are.”.

and at page 855 as follows:

“One of the remedies available against the personal representative of a deceased person for those seeking information about the deceased person’s estate is to be supplied with an account of it. It is the imperative duty of the personal representative to keep proper accounts from the time he begins to administer the estate so as to render proper account to any beneficiary who demands the same throughout the administration of the estate.

The duty to render accounts is therefore a constituent element of the administration of the estate of a deceased person. The action brought by the appellant against the respondent is therefore one for the administration of the estate of the deceased.”.

[25] It is well-entrenched that an executor or a trustee is under a duty to keep proper accounts of the estate. Until such time when the distribution of the estate is completed, the accounts would be the only means of information for the beneficiaries to keep track and ascertain whether the estate is being properly administered. In *Damayanti Kantilal Doshi & Ors v. Jigarlal Kantilal Doshi & Ors* [1998] 4 CLJ 81 CA; [1998] 4 MLJ 268; [1998] 2 MLRA 177; [1998] 4 AMR 3904, His Lordship the Honourable Shaik Daud Ismail JCA made the following observations:

“The duty to render accounts is one of the basic duties of all executors or trustees. It is the duty of the personal representatives to keep clear and accurate accounts, and to be ready at all times to render such accounts when called upon to do so, see *Halsbury’s* 4th Edn Vol 17 at para 1551 under “Liability to Account”. By the terms of the deceased’s will the issue of accounts is all important since the residue for distribution is derived at only after deductions of debts and expenses have been made. Without the accounts being rendered periodically or at all (as in this case), the beneficiaries would not have any means of knowing whether the estate is being administered properly.”.

[26] An executor is defined as a “personal representative” under section 2 of the Probate and Administration Act 1959.

Section 2 of the Probate and Administration Act 1959 reads as follows:

**“Interpretation**

**2.** In this Act, unless the context otherwise requires—

“personal representative” means the executor, original or by representation, or administrator for the time being of a deceased person, and as regards any liability for the payment of death duties includes any person who takes possession of or intermeddles with the property of a deceased person without the authority of the personal representatives or the Court;”.

[27] Section 62 read together with section 2 of the Probate and Administration Act 1959 makes it mandatory for the executor to furnish inventory and accounts of the estate of the deceased when lawful demands for them were made.

Section 62 of the Probate and Administration Act 1959 provides as follows:

**“Duty of personal representative as to inventory**

**62.** The personal representative of a deceased person shall, when lawfully required so to do, exhibit, by affidavit filed in the Court, a true and perfect inventory and account of the movable and immovable property of the deceased, and the Court shall have power to require personal representatives to bring in inventories.”.

[28] The process of providing the account of the estate of the deceased takes place before the distribution of the estate is finalized. Requests for the accounts must be reasonable and may be made multiple times, depending on how long the distribution is expected to take and the size of the estate.

[29] In dealing with such an application and considering the stage of the process in the administration of the estate of the deceased, I hold the considered view that the following approach should be adopted. First, it must be established whether the applicant is entitled to receive an account of the estate of the deceased and whether the respondent has a duty or an obligation to provide that account. This is supported by the fact that section 62 of the Probate and Administration Act 1959 only acknowledges legitimate requests for the account. Secondly, what is the scope of the estate accounts that the executor must provide? In addressing this question, one needs to determine the sufficiency of the estate accounts which is a question of fact. Being a question of fact, much depends on the circumstances at the time of the application and the size of the estate.

[30] In the present application, the resolve to the first question is rather straight forward. The plaintiffs are the beneficiaries of the estate of the deceased. As the beneficiaries of the estate of the deceased, the plaintiffs are indeed entitled to the account as they have the right of information. As the joint executors, it is not in dispute that both the 1<sup>st</sup> and 2<sup>nd</sup> defendants owe fiduciary duties to the plaintiffs as the beneficiaries of the estate in the administration of the Estate. Both the 1<sup>st</sup> and 2<sup>nd</sup> defendants too are under a duty in law to render the accounts of the estate to the beneficiaries.

[31] In order to address the second question, it is important to consider the sequence of events that has occurred to place the facts in their proper context. The events which have transpired as gathered from the affidavits may be chronologically outlined as follows:

| Date       | Events                     |
|------------|----------------------------|
| 01.04.2017 | Deceased drew up the Will. |
| 03.04.2017 | The deceased passed on.    |

|                          |   |
|--------------------------|---|
| <b>04.10.2017</b>        | <b>Grant of Probate extracted.</b>  |
| 23.12.2017               | Defendants furnished Executors' Report for the period between 04 .10.2017 and 21.12.2017.   |
| 03.09.2018               | 1 <sup>st</sup> defendant filed OS to remove 2 <sup>nd</sup> defendant as executor.   |
| 05.03.2019               | 2 <sup>nd</sup> defendant filed OS to remove 1 <sup>st</sup> defendant as executor.   |
| 22.11.2019               | 2019 Consent Order entered.   |
| 18.03.2020               | MCO/lockdown enforced in Malaysia.  |
| 18.10.2021               | MCO lifted. National Recovery Plan Phase 4. Interstate travel allowed.  |
| April 2021 to Feb 2022   | Solicitors in Singapore underwent eye surgery. This caused a delay in re-sealing of the Grant of Probate before the High Court in Singapore. Earlier, translation of the Grant of Probate from Bahasa Melayu to the English language for purposes of re-sealing in Singapore was also delayed due to the MCO. During MCO, the High Court in Malaysia was understaffed. Translation took time. |
| Oct 2022 (to *Sept 2023) | The Singapore Exchange advised to keep the deceased's Singapore CDP account (shares and stocks) opened for one year from Oct 2022 to Sept 2023 to allow for the remittance of dividends.  |
| 23.05.2023               | Plaintiffs' solicitors wrote to Messrs. Bodipalar requesting for accounts and information.  |

|                                 |  |
|---------------------------------|--|
| 30.05.2023<br>and<br>31.05.2023 | Messrs. Bodipalar responded and furnished <i>pro forma</i> account FY 2022.  |
| 09.06.2023                      | Plaintiffs filed the present OS.   |
| 29.08.2023                      | All affidavits exhausted.  |
| 08.09.2023                      | Complete written submissions filed.  |
| 15.09.2023                      | First date fixed for hearing. Parties requested for adjournment pending settlement. Hearing adjourned to 05.10.2023. |
| *Sept 2023                      | The deceased's Singapore CDP account (shares and stocks) expected to be closed for remittance of dividends.          |
| 05.10.2023                      | OS heard and decided.  |

[32] If one were to carefully consider the sequence of events which had transpired since the Grant of Probate was extracted, the following facts were apparent:

- (a) approximately three weeks after the Grant of Probate the defendants have provided the plaintiffs with the Executors' Report which set out the progress of works in the administration of the estate of the deceased, preliminary valuation of the estate, an overview of the account balance and liabilities status of the estate's accounts,
- (b) the dispute between the 1<sup>st</sup> and 2<sup>nd</sup> defendants as the joint executors started exactly eleven months after the Grant of Probate. The dispute was only resolved when the 2019 Consent Order was recorded approximately two years after the Grant of



Probate.

- (c) approximately four months after the 2019 Consent Order was recorded, the Covid-19 pandemic hit the country and a total lockdown was imposed followed by various movement control orders,
- (d) the Covid-19 pandemic caused a delay in getting the Grant of Probate re-sealed in Singapore. During the lockdown period, the High Court in Malaysia was understaffed due to the movement control orders. This resulted in a delay in getting the verified translation of the Grant of Probate from Bahasa Melayu to the English language for re-sealing in Singapore,
- (e) the solicitors in Singapore underwent eye-surgery and only recovered from surgery after the lockdown period, that was sometime in February 2022. This resulted in a further delay in getting the Grant of Probate re-sealed in Singapore,
- (f) there was an advice from the Singapore Exchange to keep the deceased's CDP account for shares and stocks opened until October 2023 for purposes of remittance of dividends,
- (g) the *pro forma* accounts for the Financial Year 2022 were furnished approximately one week after a request for accounts was made by the plaintiffs' solicitors,
- (h) when the originating summons was heard, the plaintiffs had already been furnished with the *pro forma* accounts for the Financial Year 2022 approximately four months earlier.

[33] At the onset, it is pertinent to set out the parameters which were at the forefront of my consideration. Firstly, this was not a case where the defendants as executors had failed to act promptly in performing their duties as the executors. This was also not a case where the executors display an utter refusal to provide an account of the estate under their administration. The defendants were resident in two different countries.

Towards that end, the logistics was a practical issue and problems related to that should not be dismissed outright. They were merely asking for more time due to the circumstances which had since caused a delay in the administration of the estate.

[34] First of all, I find that the defendants did not fail to render and disclose to the plaintiffs as the beneficiaries the accounts of the Estate. The defendants as the joint executors in fact did furnish to the defendants upon their demand the relevant *pro forma* account for the year ending 2022 and the relevant statements of assets and liabilities and statements of income and expenses in respect of the Estate in Singapore and Malaysia. The defendants did not dally in furnishing the plaintiffs with the available accounts. Whether or not the *pro forma* statement of account is a sufficient account is a question of fact which must depend on the peculiar circumstances of the case.

[35] I did not lose sight of the fact that the plaintiffs in prayer 1 of the originating summons did pray for a full audited account of the Estate. Towards that end, it is reasonable to imply that BDO Malaysia as the accountants appointed by the executors should also be allowed a broader time frame to perform their task properly. Based on the number of accounts of the Estate in Malaysia as well as in Singapore, I took the considered view that the defendants ought to be allowed sufficient time to render full and complete accounts of the Estate.

[36] This Court took into consideration that pending completion of the Estate accounts by BDO Malaysia, the defendants did furnish the plaintiffs with *pro forma* accounts for the year ending 2022. Of course, the plaintiffs' dissatisfaction may well be addressed at the appropriate forum when the Estate accounts have been completed but to deal with the dissatisfaction at this point in time would, in my considered view, be a little bit premature in the day if not unreasonably hasty in the circumstances.

[37] The final account of the Estate may be capable to quell all the issues

and answer all lingering questions in the minds of the plaintiffs. It may not. Whatever it may be, the due process in completing the Estate accounts should not be stifled by now allowing the plaintiffs the reliefs they prayed for. That would result in greater delays and may even cause disruptions in the process of completing the Estate accounts.

[38] It is imperative that without the accounts, the administration of the Estate cannot be finalized and the eventual distribution to the beneficiaries will be held back much longer. This is not saying that the defendants or BDO Malaysia for that matter could take their own sweet time. The defendants were under a fiduciary duty to render the accounts and that duty must be properly and duly discharged as soon as may be practicably possible. Not a minute later. The defendants too would not want to shoulder on with this responsibility longer than reasonably necessary.

[39] In this regard, the relevance and importance of the pertinent observations made by the Court of Appeal cannot be disregarded. In *Lek Eng Hock & Anor v. Leck Ah Bah* [2020] CLJU 1651 CA; [2020] MLJU 1899; [2020] MLRAU 296; [2021] 1 AMR 255, the underlying facts are materially similar to the present originating summons.

[40] In *Lek Eng Hock (supra.)*, the late Lek Ah Lek died intestate. Out of four surviving beneficiaries, the 1<sup>st</sup> and 2<sup>nd</sup> appellants were appointed as joint administrators. As administrators, the 1<sup>st</sup> and 2<sup>nd</sup> appellants filed an *ex parte* originating summons for certain orders in the administration of the estate of the deceased. The respondent as one of the beneficiaries applied to intervene in the *ex parte* originating summons. The respondent reasoned that the appellants have failed to disclose the accounts of the estate. The High Court allowed the respondent to intervene. On appeal, the Court of Appeal set aside the decision of the High Court.

[41] In respect of the respondent's complaints on the accounts being one of the justifications for the application to intervene, the Court of Appeal observed as follows:

“[25] As for the so-called accounts of the estate namely, exh.

“LEH(1)-1” (that had been supplied), learned counsel said that these are merely draft accounts in the year 2015. They are highly inadequate because:

- (a) they are not the latest up-to-date accounts;
- (b) they are supported by dubious receipts; and
- (c) they are lacking in certain details *vis-à-vis* certain movable properties, for example, rental of the immovable properties belonging to the estate.”.

[42] In delivering the decision of the Court of Appeal, Her Ladyship the Honourable Supang Lian JCA remarked as follows:

“[40] To our minds, the stance of the respondent on this is unreasonable and premature. In effect, he is demanding that the appellants (as the administrators) provide a financial statement or audited accounts instead of a statement of account. *The learned High Court Judge, in our view, has failed to appreciate that the appellants (as administrators and in accordance with their duties) would in due course prepare and render final accounts before the estate is wound up.* The appellants’ undertaking on this is to be found in para 8 of the applicants’ Affidavit-in-Reply No. 2 (see p. 151, Rekod Rayuan Jilid 2). It is not in dispute that the bulk of the assets of the estate consists of the immoveable properties and the respondent is not objecting to the manner of its distribution as specified in the OS. *Ironically, it is the respondent’s own intervention that has stalled the application to obtain the order to administer and distribute the estate’s assets to all beneficiaries (including the respondent) without which the accounts of the estate cannot be finalized.*

[41] Moreover, the learned High Court Judge, in our view, has failed to appreciate that the respondent being the party that wishes the Court to believe in the existence of a fact, *viz.*, the appellants’ failure to render accounts, bears the burden of proof (see s. 103 of

the Evidence Act 1950). The respondent has not referred to any provision of law or case law on the format of the statement of accounts that he sought from the appellants. *It therefore does not lie with him to say that the statements of accounts rendered to him are insufficient or inadequate.*

[42] Thus, the respondent’s claim that the appellants have failed in their duty to render accounts does not hold water. With all due respect, the learned High Court Judge was plainly wrong in concluding otherwise.”.

[Emphasis added]

[43] The avenue made available to the beneficiaries under section 62 of the Probate and Administration Act 1959 should not be used to stifle the execution by the executors of their primary duties in respect of the administration of the estate of the deceased. It should not be oppressive to the executors. It is meant to keep the beneficiaries abreast of the status of the estate by means of the statement of accounts, nothing more. The primary duty of the executors is not merely to render accounts. Their primary duty above all is to distribute the estate in accordance with the Will.

[44] An exercise of judicial discretion is not one which is made on whims and fancies or borne out of a suspicious intuition. It must be based on established principles in the context of the relevant material facts prevailing at the time when the discretion is to be exercised. In the present case, I hold the considered view that it would be unduly oppressive to order the 1<sup>st</sup> and 2<sup>nd</sup> defendants to furnish the accounts.

[45] In considering the circumstances of the present case, it appeared to my mind that the plaintiffs’ application was fuelled by suspicion in the manner the Estate was being administered by the defendants. If at all, I did not find much evidence to support any proposition to suppose that the defendants as the joint executors were in any manner responsible for failing to take appropriate steps in the administration of the Estate or had

not properly discharged their functions as the joint executors of the Estate. (See: *Damanyanti Kantilal Doshi & Ors v. Jigarlal Kantilal Doshi & Ors* (supra)).

[46] In the circumstances of the present application, I hold the considered opinion that it would be averse to the interest of the beneficiaries for this Court to allow the reliefs sought for by the plaintiffs. The defendants too are the beneficiaries. Like the plaintiffs, the defendants too are entitled to the same accounts of the Estate and eventually the distribution in accordance with the Will. As such, it is best in the circumstances for the defendants and by the same extension, BDO Malaysia, be allowed to complete the Estate accounts and then present the same to the beneficiaries.

[47] It is interesting to observe that the plaintiffs had sought for an order that the defendants be ordered to account for the assets of the deceased rights from the period of six months preceding the demise of the deceased. This to my mind is patently too much of a stretch.

[48] Prior to the demise of the late Lee Pheck Hong, there was no Estate to be administered by the defendants to begin with. Further, the duties of the defendants as the joint executors only began upon extraction of the Grant of Probate and not before. As such, it would be an affront to the rule of law to allow the plaintiffs the reliefs sought for beyond the relevant time line. That would be tantamount to imposing certain duties on the defendants without any legal basis. In this respect, this Court viewed the premise of the plaintiffs' prayers as utterly unfounded and without any basis.

[49] Being fiduciaries themselves, the executors have the right to be allowed to properly administer the estate in the performance of their fiduciary duties. As such, the executors should not be saddled with extra responsibilities and incur more expenses borne out of the estate to furnish complete accounts in the manner fashioned by the plaintiffs just to satisfy their curiosity and suspicions. After all, the defendants are also

beneficiaries who want to see the administration of the estate completed and uncover all the details.

### **Conclusion**

[50] This Court held the considered view that the prayers seeking for accounts prior to the demise of the deceased were beyond the duties of the defendants as administrators of the estate of deceased. Generally, on the facts as disclosed in the affidavits I hold the considered view that it would not be in the best interest of the administration of the estate for this Court to grant the plaintiffs the order sought for in the originating summons. I also did not find it expedient at this point in time to grant the plaintiffs the prayers they sought for.

[51] On the premise of these reasons, I dismissed the plaintiffs' application. Cost of RM3,000.00 was allowed for each defendant.

**Dated:** 13 OCTOBER 2024

**(AHMAD SHAHRIR MOHD SALLEH)**

Judge

High Court Of Malaya

Kuala Lumpur.

### **Counsel:**

*For the plaintiffs - Goh Siu Lin & Denise Lim Hsui Yen; M/s Kee Sern, Siu & Huey*

*For the 1<sup>st</sup> defendant - Cyndi Chow Li Kian & Megan Choo Wen Shin; M/s Josephine, L K Chow & Co*

*For the 2<sup>nd</sup> defendant - Liaw Si Khoon, Thomas Hooi Wang & Debbie Khoo Li Chien (PDK); M/s Liow & Co*